federal register

Thursday
April 2, 1992

Part VI

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System Application Deadlines, General Permit Requirements and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL-4100-4]

National Pollutant Discharge Elimination System Application Deadlines, General Permit Requirements and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Water Quality Act (WQA) of 1987 added section 402(p) to the Clean Water Act (CWA). Section 402(p) of the CWA requires the Environmental Protection Agency (EPA) to establish phased and tiered requirements for storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. On August 16, 1991 (56 FR 40948), EPA requested public comments on several regulatory and policy issues regarding NPDES permits for storm water discharges associated with industrial activity. On November 5, 1991 (56 FR 56549), the Agency also proposed extending the deadline for submitting part 2 of group applications for storm water discharges associated with industrial activity.

In response to comment received on August 16, 1991, proposal, today's action describes a National Strategy for issuing NPDES permits for storm water discharges associated with industrial activity. Today's action also contains a final rule that revises minimum NPDES monitoring requirements for storm water discharges associated with industrial activity. In addition, today's rule establishes minimum requirements for filing notices of intent to be authorized to discharge under NPDES general permits.

Today's rule also establishes a deadline of October 1, 1992 for part 2 of group applications for storm water discharges associated with industrial activity. As noted above, this revised deadline was proposed on November 5, 1991. In connection with group applications, today's rule contains an amendment to clarify the minimum number of facilities that must submit sampling information in part 2 of a group application.

Finally, today's action codifies several provisions of Section 1068 of the Intermodal Surface Transportation Efficiency Act of 1991 or Transportation Act into the NPDES regulations. Section 1068 of the Transportation Act addressed permit application deadlines for storm water discharges associated with industrial activity from facilities that were owned or operated by municipalities.

EFFECTIVE DATE: The final rule becomes effective May 4, 1992.

ADDRESSES: The public record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street, SW, Washington, DC, 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the rule contact the NPDES Storm Water Hotline at (703) 821-4823 or: Kevin Weiss, Office of Wastewater Enforcement and Compliance (EN-336), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-9518.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Environmental Impacts
- B. Water Quality Act of 1987
- C. November 16, 1990, Permit Application Regulations
- D. August 16, 1991 Notice
- E. November 5, 1991 Proposal
- F. Intermodal Surface Transportation Efficiency Act of 1991

II. Today's Rule
- A. Long-Term Permit Issuance Strategy
- B. Minimum Monitoring and Reporting Requirements for Storm Water Discharges
- C. Application Requirements for General Permits
- D. Deadline for part 2 of Group Applications
- E. Clarification for Part 2 of Group Applications
- F. Transportation Act Deadlines

III. Economic Impact
IV. Executive Order 12291
V. Paperwork Reduction Act
VI. Regulatory Flexibility Act
VII. APA Requirements

I. Background

The 1972 amendments to the Federal Water Pollution Control Act (FWPCA, also referred to as the Clean Water Act or CWA), prohibited the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. Efforts to improve water quality under the NPDES program have focused traditionally on reducing pollutants in discharges of industrial process wastewater and from municipal sewage treatment plants. This program emphasis has developed for a number of reasons. At the onset of the program in 1972, many sources of industrial process wastewater and municipal sewage were not controlled adequately, and represented pressing environmental problems. In addition, sewage outfalls and industrial process discharges were easily identified as responsible for poor, often drastically degraded water quality conditions. However, as pollution control measures were developed initially for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff, were also major causes of water quality problems. Some diffuse sources of water pollution, such as agricultural storm water discharges and irrigation return flows, are exempted statutorily from the NPDES program. Controls for other diffuse sources have been slow to develop under the NPDES program.

A. Environmental Impacts

Several national assessments have been conducted to evaluate impacts on receiving water quality. For the purpose of these assessments, urban runoff was considered to be a diffuse source or nonpoint source pollution, although in legal terms, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA and subject to the NPDES program.

The "National Water Quality Inventory, 1990 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. In preparing section 305(b) Reports, the States were asked to indicate the fraction of the States' waters that were assessed, as well as the fraction of the States' waters that were fully supporting, partly supporting, or not supporting designated uses. The Report indicates that of the rivers, lakes, and estuaries that were assessed by States (approximately one-third of stream miles, one-half of lake acres and three-quarters of estuarine waters), roughly 60 percent to 70 percent are supporting the uses for which they are designated. For waters with use impairments, States were asked to determine impacts due to diffuse sources (agricultural and urban runoff and other categories of diffuse sources), municipal sewage, industrial (process) wastewaters, combined sewer overflows, and natural sources, and then to combine impacts to arrive at estimates of the relative percentage of State waters affected by each source. In this manner, the relative importance of the various sources of pollution causing use impairments was assessed and weighted national averages were calculated.

Based on 51 States and Territories that provided information on sources of pollution, the Assessment also concluded that pollution from diffuse sources such as runoff from agricultural, urban areas, construction sites, land disposal activities, and resource extraction activities is cited by the States as the leading cause of water quality impairment.[1] Diffuse sources appear to be increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come under control and intensified data collection efforts provide additional information. Some examples where use impairments are cited as being caused by diffuse sources include: Rivers and streams, where 11 percent are caused by separate storm sewers, 6 percent are caused by construction and 14 percent are caused by resource extraction; lakes, where 28 percent are caused by separate storm sewers and 24 percent are caused by land disposal; the Great Lakes shoreline, where 6 percent are caused by separate storm sewers, and 41 percent are caused by land disposal; for estuaries where, 30 percent are caused by separate storm sewers; and for coastal areas, where 36 percent are caused by separate storm sewers and 37 percent are caused by land disposal.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report "America's Clean Water—The States' Nonpoint Source Assessment, 1985" which indicated that 38 States reported urban runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

Studies conducted by the National Oceanic and Atmospheric Administration (NOAA) [2] indicate that urban runoff is a major pollutant source which adversely affects shellfish growing waters. The NOAA studies identified urban runoff as affecting over 578,000 acres of shellfish growing waters on the East Coast (39 percent of harvest-limited area); 2,000,000 acres of shellfish growing waters in the Gulf of Mexico (59% of the harvest-limited area); and 130,000 acres of shellfish growing waters on the West Coast (52% of harvest-limited areas).

B. Water Quality Act of 1987

The Water Quality Act (WQA) of 1987 added section 402(p) to the CWA to establish a comprehensive two phased approach for EPA to address storm water discharges. Section 402(p)(1) provides that EPA or NPDES States cannot require a permit for certain storm water discharges until October 1, 1992, except for storm water discharges listed under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are covered under Phase I of the program and are required to obtain a permit before October 1, 1992:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including BAT/BCT technology-based requirements and that permits for discharges from municipal separate storm sewer must meet a new statutory standard requiring controls to reduce the discharge of pollutants to the maximum extent practicable (MEP). As with all point source discharges under the CWA, storm water discharges are subject to applicable water quality-based standards.

Section 402(p)(4) establishes deadlines to implement the permit program for: Storm water discharges associated with industrial activity; discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more); and discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000). This section of the Act specifies deadlines for EPA to promulgate permit application requirements, applicants to submit permit applications, EPA and authorized NPDES States to issue NPDES permits, and for permit compliance for the identified storm water discharges.

NPDES permits for all other storm water discharges fall under phase II of the program, and cannot be required until October 1, 1992, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards.

EPA, in consultation with the States, is required to conduct two studies on phase II storm water discharges that are in the class of discharges for which EPA and NPDES States cannot require permits prior to October 1, 1992. The first study will identify those storm water discharges or classes of storm water discharges addressed by phase II and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study is for the purpose of establishing procedures and methods to control phase II storm water discharges to the extent necessary to mitigate impacts on water quality. Based on the two studies, EPA in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992, which designate classes of phase II storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must establish, at a minimum, (A) priorities, (B) requirements for State storm water management programs, and (C) expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

C. November 16, 1990, Permit Application Regulations

EPA promulgated permit application regulations for the storm water discharges identified under section 402(p)(2) (B), (C), and (D) of the CWA, including storm water discharges associated with industrial activity, on November 16, 1990 (55 FR 47990). The November 16, 1990 regulations address requirements, including deadlines, for two sets of application procedures for storm water discharges associated with

[1] Major classes of diffuse sources that include, in part, storm water point source discharges are: Urban runoff conveyances, construction sites, agriculture (feedlots), resource extraction sites, and land disposal facilities.

[2] See "The Quality of Shellfish Growing Waters on the East Coast of the United States", NOAA, 1989; "The Quality of Shellfish Growing Waters in the Gulf of Mexico", NOAA, 1988; and "The Quality of Shellfish Growing Waters on the West Coast of the United States", NOAA, 1990.

industrial activity: Individual permit applications and group applications. In addition, the notice recognizes a third set of application procedures for storm water discharges associated with industrial activity: Those associated with general permits. With these requirements, EPA is attempting to implement a flexible, cost-effective approach for storm water permit applications.

The requirements for individual applications for storm water discharges associated with industrial activity are set forth at 40 CFR 122.26(c)(1). Generally, the applicant must provide comprehensive facility specific narrative information including: (1) A site map; (2) an estimate of impervious areas; (3) the identification of significant materials treated or stored on site together with associated materials management and disposal practices; (4) the location and description of existing structural and non-structural controls to reduce pollutants in storm water runoff; (5) a certification that all storm water outfalls have been evaluated for any unpermitted non-storm water discharges; and (6) any existing information regarding significant leaks or spills of toxic or hazardous pollutants within three years prior to application submittal. In addition, an individual application must include quantitative analytical data based on samples collected on site during storm events. Under § 122.26(e)(1) of the November 16, 1990 rule, individual applications were to have been submitted by November 18, 1991.[3]

The group application process allows for facilities with similar storm water discharges to file a single two part permit application. Part 1 of a group application includes a list of the facilities applying, a narrative description summarizing the industrial activities of participants of the group, a list of significant materials exposed to precipitation that are stored by participants and material management practices employed to diminish contact of these materials by precipitation (see 40 CFR 122.26(c)(2)(i)). Under the November 16, 1990 regulations, Part 1 of the group application was to be submitted to EPA no later than March 18, 1991.[4] The regulation provides that EPA has a 60 day period after receipt to review the part 1 applications and notify the groups as to whether they have been approved or denied as a properly constituted "group" for purposes of this alternative application process. Part 2 of the group application contains detailed information, including sampling data, on roughly ten percent of the facilities in the group (today's notice contains a more detailed description clarifying the requirements of 40 CFR 122.26(c)(2)(ii)). Under the November 16, 1990 regulations, part 2 applications were to be submitted no later than 12 months after the date of approval of the part 1 application. (Revisions to this deadline are discussed below). Also under the November 16, 1990 regulation, facilities that are rejected as members of a group were to have 12 months from the date they receive notification of their rejection to file an individual permit application (or obtain coverage under an appropriate general permit).[5]

The group application process has been designed by EPA as a one-time administrative procedure to ease the burden on the regulated community and permitting authorities in the initial stage of the storm water program.

The third application procedure entails seeking coverage under a general permit for storm water discharges associated with industrial activity. Dischargers covered by a general permit are excluded under 40 CFR 122.21(a) from requirements to submit individual or group permit applications. Conditions for filing an application to be covered by a general permit (typically called a Notice of Intent (NOI)) are established on a case-by-case basis. As discussed in more detail below, today's notice establishes final minimum requirements for general permit NOI submissions.

The November 16, 1990 regulations also establish a two part application process for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. The regulations lists 220 cities and counties that are defined as having municipal separate storm sewer systems serving a population of 100,000 or more and allows for case-by-case designations of other municipal separate storm sewers to be part of these systems (55 FR 48073, 48074). The regulations provide that part 1 applications for discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more) were due November 18, 1991. Part 2 applications for discharges from large systems are due on November 16, 1992. Part 1 applications for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more, but less than 250,000) are due May 18, 1992. Part 2 applications for discharges from medium systems are due on May 18, 1993. Today's rulemaking does not address, modify or change application requirements or deadlines established by the November 16, 1990 regulations for discharges from municipal separate storm sewer systems serving a population of 100,000 or more.

D. August 16, 1991 Notice

On August 16, 1991, EPA published a notice (56 FR 40948) requesting public comment on four major areas:

(1) EPA's long-term permit issuance strategy for storm water discharges associated with industrial activity;

(2) Proposed modifications to 40 CFR 122.44(i)(2) addressing minimum monitoring and reporting requirements for NPDES permits for storm water discharges associated with industrial activity;

(3) Proposed modifications to 40 CFR 122.28(b)(2) addressing minimum notice of intent requirements for general permits;

(4) Draft baseline general permits for storm water discharges associated with industrial activity in 12 States (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, ID) and 6 Territories (District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) without authorized NPDES State programs; on Indian lands in AL, CA, GA, KY, MI, MN, MS, MT, NC, ND, NY, NV, SC, TN, UT, WI, and WY; located within Federal facilities and Indian lands in CO and WA; and located within Federal facilities in Delaware.

One of the central purposes of today's notice is to address and/or take final action on the first three items listed above. Each of these three items is discussed in more detail below. The fourth component of the August 16, 1991 proposal involving draft baseline general permits for storm water will be addressed in a separate rulemaking presently scheduled for promulgation in late spring of this year.

E. November 5, 1991 Proposal

On November 5, 1991, (56 FR 56555), as a result of issues and concerns raised

[3] The deadline for submitting an individual permit application for storm water discharges associated with industrial activity was extended from November 18, 1991 to October 1, 1992 (56 FR 56548, (November 5, 1991)).

[4] The deadline for submitting part 1 of the group application was extended from March 18, 1991 to September 30, 1991 (56 FR 12098 (March 21, 1991)).

[5] The deadline for a facility that is rejected as a member of a group application to submit an individual permit application has been revised to provide that an individual application must be submitted no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first. (56 FR 56549, (November 5, 1991)).

in comments on the March 21, 1991 proposed deadline extensions, EPA requested comments on extending the deadline for submitting part 2 of the group application from May 18, 1992 to October 1, 1992. In the November 5, 1991 notice, the Agency indicated that this extension would provide an appropriate opportunity to conduct sampling to support the part 2 application and would allow for permit issuing agencies to issue general permits.

F. Intermodal Surface Transportation Efficiency Act of 1991

On December 18, 1991, the President signed the Intermodal Surface Transportation Efficiency Act (or Transportation Act) of 1991, into law. Section 1068 of the Transportation Act addresses NPDES permit application deadlines for storm water discharges associated with industrial activity from facilities that are owned or operated by muncipalities.

Section 1068(b)(1) of the Transportation Act provides that EPA shall require individual permit applications for storm water discharges associated with industrial activity that are owned or operated by municipalities on or before October 1, 1992; except that any municipality that has participated in a timely part 1 group application and that is denied participation in the group application shall not be required to submit an individual application until the 180th day following the date on which the denial is made.

Section 1068(b)(2) of the Transportation Act provides that part 1 of group applications for storm water discharges associated with industrial activity that are owned or operated by a municipality with a population of 250,000 or more shall be required on or before September 30, 1991, and part 2 applications on or before October 1, 1992. Part 1 of group applications for storm water discharges associated with industrial activity that are owned or operated by a municipality with a population of less than 250,000 shall be required on or before May 18, 1992, and part 2 applications on or before May 17, 1993.

Section 1068(c) of the Transportation Act provides that EPA shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any storm water discharge associated with an industrial activity other than an airport, powerplant, or uncontrolled sanitary landfill owned or operated by such municipality before October 1, 1992, unless a permit is required by either section 402(p)(2) (A) or (E) of the CWA. Section 1068(d) of the Transportation Act defines uncontrolled sanitary landfill to mean a landfill or open dump, whether open or closed, that does not meet the requirements for runon and runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

Section 1068(e) of the Transportation Act clarifies that the statutory deadlines for group and individual applications outlined above do not affect any storm water discharge that is subject to the provisions of either section 402(p)(2)(A) or 402(p)(2)(E) of the CWA. Section 402(p)(2)(A) of the CWA addresses storm water discharges that had an NPDES permit prior to February 4, 1987. Section 402(p)(2)(E) of the CWA addresses storm water discharges that EPA or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States. As discussed in more detail below, today's rule codifies the application provisions of Section 1068 of the Transportation Act.

II. Today's Rule

Today's rule addresses the following: (1) EPA's long-term permit issuance strategy for storm water discharges associated with industrial activity;

(2) Modifications to 40 CFR 122.44(i)(2) addressing minimum monitoring and reporting requirements for NPDES permits for storm water discharges associated with industrial activity;

(3) Modifications to 40 CFR 122.28(b)(2) addressing minimum notice of intent requirements for general permits;

(4) Modifications to 40 CFR 122.26(e) to establish a deadline of October 1, 1992 for part 2 of group applications for storm water discharges associated with industrial activity;

(5) An amendment to 40 CFR 122.26(c)(2) to clarify the minimum number of facilities in a group that must submit sampling information in part 2 of a group application; and

(6) Modifications to 40 CFR 122.26(e) to codify portions of Section 1068 of the Transportation Act of 1991.

A. Long Term Permit Issuance Strategy

Many of the initial concerns regarding the NPDES storm water program focussed on adapting the existing NPDES permit program to effectively address the large number of storm water discharges associated with industrial activity. Potential issues with implementing the NPDES program for storm water discharges associated with industrial activity are raised not only by the number of industrial facilities subject to the program, but also by the challenges presented in identifying and assessing appropriate technologies for preventing and reducing pollutants in different classes of storm water and the differences in the nature and extent of storm water discharges.

Based on a consideration of comments from authorized NPDES States, municipalities, industrial facilities and environmental groups on the permitting framework and permit application requirements for storm water discharges associated with industrial activity, EPA has developed a strategy for permitting storm water discharges associated with industrial activity that will serve as a foundation for future program development and technology transfer. The Agency intends to use the flexibility provided by the CWA [6] in designing a workable and reasonable permitting system.

In an action related to this rulemaking, EPA, in conjunction with the Rennselaerville Institute, has initiated a project to develop recommendations for streamlining and improving the existing permit issuance and compliance processes for storm water discharges. In addition, the project will examine whether and how the currently unregulated phase II storm water discharges should be addressed. EPA will be issuing a **Federal Register** notice to announce a series of meetings that will address these phase II storm water discharges.

The strategy in today's action consists of two major components, a tiered framework for developing permitting priorities and a framework for the development of State Storm Water Permitting Plans.

1. Permitting Priorities

The Agency believes that most storm water permitting activities can be described in terms of the following four classes of activities:

- *Tier I—Baseline Permitting:* One or more general permits will be developed initially to cover the majority of storm water discharges associated with industrial activity;

[6] The Court in *NRDC* v. *Train*, 398 F. Supp. 1393 (D.D.C. 1975) *aff'd. NRDC* v. *Costle*, 568 F.2d 1369 (D.C. Cir. 1977), has recognized the administrative burden placed on the Agency by requiring individual permits for a large number of storm water discharges. These courts have affirmed EPA's discretion to use certain administrative devices, such as area permits or general permits to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that are established, including requirements for best management practices. See August 16, 1991 (56 FR 40948) for further discussion of the use of general permits for storm water discharges.

• *Tier II—Watershed Permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits;

• *Tier III—Industry-Specific Permitting:* Specific industry categories will be targeted for individual or industry-specific general permits; and

• *Tier IV—Facility-Specific Permitting:* A variety of factors will be used to target specific facilities for individual permits.

These four classes of activities will be implemented over time and will reflect priorities within given States. In most States, tier I activities, issuance of baseline permits, will be the initial starting point. As priorities and risks within the State are evaluated, classes of storm water discharges or individual storm water discharges will be identified for tier II, III or IV permitting activities. Usually a storm water discharge or a class of discharges will not go through a sequence that involves all four of the tiers associated with the strategy, but may for example, go from initial coverage under a Tier I baseline permit to coverage under a tier III industry-specific general permit.

a. *Tier I—Baseline permitting.* Tier I general permits can initially cover the majority of storm water discharges associated with industrial activity in a State. Consolidating many sources under a general permit greatly reduces the administrative burden of issuing permits for storm water discharges associated with industrial activity. Under this approach:

• Pollution prevention and/or best management practices will be established for discharges covered by the permit;

• Facilities whose discharges are covered by the permit will be certain of their legal responsibilities and have an opportunity to comply with the CWA;

• EPA and authorized NPDES States will begin to collect and review data on storm water discharges from priority industries, thereby supporting subsequent permitting activities;

• The public, including municipal operators of municipal separate storm sewers which may receive storm water discharges associated with industrial activity, will have the opportunity to review data and reports developed by industrial permittees under section 308(b) of the CWA;

• The baseline permits will provide a basis for coordinating requirements for storm water discharges associated with industrial activity with requirements of municipal storm water management programs in permits for discharges from municipal separate storm sewer systems.

• The baseline permits will provide a basis for bringing selected enforcement actions; and

• The baseline permit, along with the State storm water permitting plans (discussed below), will provide a focus for public comment on draft permits and subsequent phases of the permitting strategy for storm water discharges.

Initially, the coverage of the baseline permits will be broad. However, it is anticipated that coverage will become more specific and targeted as other permits are issued for storm water discharges associated with industrial activity pursuant to tier II through tier IV activities. The Agency believes that tier I permits can establish the appropriate balance between monitoring requirements and implementable controls that will initiate facility-specific controls and provide sufficient data for compliance monitoring and future program development. Baseline general permits are flexible enough to allow the inclusion of tier II, III or IV types of permit conditions, such as industry specific monitoring or control conditions into the baseline general permit.

b. Tier II—Watershed permitting. Issuing permits on a watershed basis is potentially a desirable way to cost effectively use Agency resources to satisfactorily address risk. Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual and more specific general permitting activities. This process can be initiated by identifying receiving waters (or segments of receiving waters) where storm water discharges associated with industrial activity have been identified as a source of use impairment or are suspected to be contributing to use impairment. Information developed under sections 304(1), 305(b), and 319(a) of the CWA, along with information from other sources (including information developed under the baseline general permits for storm water discharges), can be used in evaluating impacts on receiving waters. This information may identify classes of storm water discharges that are of particular concern and portions of watersheds where the sources of concern are located. Appropriate classes of storm water discharges in these locations can be targeted for additional permit conditions which may provide for additional information to characterize the discharge (e.g., additional monitoring and reporting requirements) or, where appropriate, for more stringent controls.

Information gathered under initial permits for storm water discharges as well as information from other sources can be used to reassess water quality-based controls. As discussed in more detail below, State storm water permitting strategies are expected to have a major role in this process.

c. Tier III—Industry-specific permitting. Specific industry categories will be targeted for individual or industry-specific general permits. These permits will allow permiting authorities to focus attention and resources on industry categories of particular concern and/or industry categories where tailored requirements are appropriate. The Agency will work with the States to develop model permits for selected classes of industrial storm water discharges. In addition, the group application process adopted in the November 16, 1990 regulation, (55 FR 47990) will provide an additional mechanism for developing industry-specific general permits. Group applications that are received can be used to develop model permits for the appropriate industries.

d. Tier IV—Facility-specific permitting. Individual permits will be appropriate for some storm water discharges in addition to those identified under tier II and tier III activities. Individual permits should be issued where warranted by the environmental risks of the discharge, the need for additional and more complex individual control mechanisms, a facility's compliance history or the potential to consolidate permit requirements for a particular facility. For example, individual NPDES permits for facilities with process discharges should be expanded during the normal process of permit reissuance to cover storm water discharges from the facility. This provides an opportunity to develop more facility specific individual controls without greatly increasing incremental administrative burdens.

2. State Storm Water Permitting Plans

EPA believes that State Storm Water Permitting Plans provide an effective basis for ensuring adequate public input, evaluating program activities and priorities, and providing program oversight during the earlier stages of program development. These plans will provide an effective coordination and tracking mechanism for evaluating the initial permitting activities for storm water discharges required under section 402(p) of the CWA. In addition, State Storm Water Permitting Plans will provide a framework within which to coordinate and asses the relationship

and appropriate priorities between controlling storm water discharges under the NPDES program with other efforts to address diffuse sources of water pollution, such as State Nonpoint Source Control Programs developed under section 319 of the CWA.

EPA has outlined below a number of the components and elements of State Storm Water Permitting Plans which it believes are essential to assure successful implementation of the storm water initiative called for in section 402(p) of the CWA. At a minimum, State Storm Water Permitting Plans should include a description of an oversight strategy regarding the implementation of NPDES permits for discharges from large and medium municipal separate storm sewer systems; storm water discharges associated with industrial activity; and case-by-case designations of storm water discharges needing a permit. Plans should be developed for each State by the NPDES authority (e.g. either an authorized NPDES State, or, where a State does not have base program authorization, by EPA).

EPA is requesting that draft State Storm Water Permitting Plans be provided to the Office of Wastewater Enforcement and Compliance by April 3, 1995. EPA anticipates that States will update these plans on a regular basis. These plans will assist EPA in technology transfer activities with other States, evaluating the progress of States in implementing storm water permitting activities, and in identifying both successes and difficulties with ongoing program implementation. The initial State Storm Water Permitting Plan will also entail preliminary planning, assessment, and tracking that will be essential to developing phase II State Storm Water Management Programs called for under section 402(p)(6) of the CWA.

The basic framework for the Plan should include the following elements on a State-wide-basis:

Municipal Separate Storm Sewer Systems

- A list of municipal separate storm sewer systems serving a population of 100,000 or more within the State;
- For systems identified, a summary of the estimated pollutant loadings as initially provided in the permit application for such discharges, and as otherwise updated;
- The status of the issuance of permits for discharges from municipal separate storm sewer systems serving a population of 100,000 or more, including any NPDES permit number for such discharges; and
- An outline of the major components of municipal storm water management programs required under permits for discharges from municipal separate storm sewer systems, including a detailed description of the implementation of any innovative or model municipal program components.

Storm Water Discharges Associated With Industrial Activity

- A description of the status of activities to issue and implement baseline general permits, including a copy of any final general permit for storm water discharges associated with industrial activitiy;
- A list of categories of industrial facilities that have storm water discharges associated with industrial activity that are being considered for industry-specific storm water general permits;
- A description of procedures, including activities conducted under any general permit (such as inspections, review of notices of intent or review of monitoring reports) to identify specific storm water discharges associated with industrial activity that are appropriate for individual permits;
- A description of how permits for discharges from municipal separate storm sewer systems require the development of muncipal storm water management programs addressing the control of pollutants in storm water discharges associated with industrial activity.

Impacted Waters

- A description of procedures to identify receiving waters where discharges from municipal separate storm sewers, storm water discharges associated with industrial activity, or any other class of storm water discharges are, or have the potential to, cause or contribute to a violation of a water quality standard, including a list of waters identified by these procedures.
- A plan to evaluate improvements to water quality resulting from controlling storm water discharges.

Case-by-Case Designations.

- A description of procedures to identify storm water discharges (other than those currently subject to requirements for obtaining a permit) that contribute to a violation of a water quality standard or significantly contribute pollutants to the waters of the United States.
- A list of storm water discharges (and associated receiving waters) that have been designated or are being considered for designation under section 402(p)(2)(E) of the CWA as needing a permit.

EPA strongly encourages public participation and comment, including efforts to coordinate with appropriate Federal and State land managers, at the State level during the development of these plans.

These initial State storm water plan components will assist the implementation of permitting efforts for storm water discharges associated with industrial activity and other priority storm water discharges by creating a framework for planning and prioritizing State storm water permitting activities, tracking State permit issuance efforts, and providing EPA information for technology transfer purposes among NPDES permitting authorities and other State agencies. The State Storm Water Permitting Plans will provide a framework for implementing the tiered long-term strategy for permitting storm water discharges associated with industrial activity, and so noted above, it will assure preliminary State-wide planning and assessment that will be essential to developing phase II State Storm Water Management Programs required under section 402(p)(6) of the CWA. In reviewing State Storm Water Permitting Plans, EPA will coordinate with Federal Agencies that may be affected by components of the plans.

3. States without NPDES General Permit Authority

As noted, the issuance of general permits is an important component in the recommended permit issuing strategy. Presently 38 States (and 1 territory) have been authorized to implement the NPDES permit program. However, only 29 of these States have been authorized to issue general permits. If NPDES authority is not obtained for any of the remaining 10 States, individual NPDES permits based on the submission of individual or group applications will have to be issued for storm water discharges associated with industrial activity. It is important to emphasize that under the CWA, EPA cannot issue general permits in States that have been authorized to administer the base NPDES program.

EPA strongly recommends authorized NPDES States without general permit authority to obtain general permit authority as soon as possible. EPA is currently working with these States to provide technical assistance and support and to expedite the authorization process.

4. Response to Comments

a. *Tiered priorities.* Many commenters agreed that EPA and authorized NPDES States should prioritize permit issuance efforts for storm water discharges associated with industrial activity, and indicated that the tiered priorities identified by EPA generally establish an appropriate conceptual framework for such efforts. These commenters generally indicated that the four tier strategy provides appropriate opportunities to identify high-risk discharges. In response, the Agency agrees and is retaining the four tiered set of priorities as discussed in the August 16, 1991 proposal.

Some commenters indicated that they thought EPA and authorized NPDES States should be bound to implementing the tiered priorities consecutively in the order reflected by the four tiers. These commenters indicated that the draft general permits noticed on August 16, 1991 by EPA violated the tiered priority approach because the permits contained some permit conditions which were above a tier I baseline set of pollution prevention measures. EPA disagrees with these comments. The Agency wants to clarify that it only intends the four tiered set of priorities to be used as a general conceptual framework which can be used to describe efforts to issue permits. The strategy for setting storm water permit issuance priorities is not intended to be a set of regulatory requirements binding on EPA, States, or industrial dischargers. Articulating tiered priorities does not legally restrict conditions in permits issued by EPA or authorized NPDES States. Rather all NPDES permits, including permits for storm water discharges associated with industrial activity, must be in compliance with sections 301 and 402 of the CWA. A major purpose of articulating tiered priorities is to assist in identifying and developing appropriate permit conditions for high-risk facilities. Tier I baseline general permits which have some of the characteristics of tier II or III permits are consistent with these objectives.

b. *State Plans.* Some States supported the concept of Plans, but were concerned that scheduling plan development one year after the date of today's rule would hinder the initial development of storm water programs in a number of States. These commenters indicated that the NPDES storm water program would be in its initial stage of implementation and authorized NPDES States would be busy conducting a number of critical activities such as obtaining general permit authority, issuing baseline general permits, and issuing permits for discharges from large and medium municipal separate storm sewer systems. They indicated that these activities could be disrupted if States placed top priority on developing and submitting plans within a year of today's action. EPA agrees with these concerns, and believes that while development of these plans should begin early in the storm water permit issuance process to help guide implementation, draft plans do not need to be prepared for submission until April 3, 1995.

One State stressed that permitting plans were necessary to assure national equitability and prevent economic disincentives in States with progressive storm water management programs. EPA believes that one of its goals in overseeing the development of the NPDES program is to ensure that NPDES permits for storm water discharges reflect the requirements of the CWA in an equitable manner that reflects the technology-based and water quality-based requirements of the CWA. At the same time, the Agency recognizes the need to provide sufficient regulatory flexibility to allow States to make rational and reasonable permitting decisions. For example, today's rule provides permit writers with additional flexibility to target high risk discharges and establish group or facility specific monitoring and reporting requirements in NPDES permits for storm water discharges associated with industrial activity. In addition, permit conditions for most classes of storm water discharges will be established on a case-by-case basis. Nonetheless, the Agency agrees with the commenter that State Storm Water Permitting Plans can provide an important tool to ensure that NPDES storm water programs in different States reflect pollution control requirements consistent with the CWA while maintaining the adequate flexibility necessary to successfully implement the NPDES storm water program.

Several authorized NPDES States did not support the idea of State Storm Water Permitting Plans, but rather indicated that annual EPA/State agreements could be used as a tool for oversight of the NPDES storm water program. In response, the Agency believes that the approach in the Plans is consistent with and can be implemented as a component of annual EPA/State agreements if there is an adequate level of detail and specificity and the State and EPA Region agree on including the elements noted above as part of the annual oversight process. The Agency believes that by publishing a framework for these Plans, it will provide States with notice of necessary Plan elements, provide a nationally consistent approach for evaluating program progress, facilitate technology transfer activities, encourage public participation, and ensure that risks are evaluated ion the context of the entire NPDES storm water program.

In the August 16, 1991 notice, the Agency requested comments on whether the guidelines for Plans should be made requirements that are incorporated into EPA regulations, or remain non-binding recommendations for States. Most of the commenters that responded to this issue urged EPA to make the guidelines for Plans non-binding recommendations for the States. While EPA notes that it may require preparation of such Plans pursuant to Section 402(p)(6) of the CWA, the Agency agrees with the commenters that establishing guidelines for Phase I storm water permitting plans as non-binding recommendations provides an amount of flexibility that is appropriate at this point in the program's development. Therefore, the Agency is clarifying that the guidelines for Phase I Plans and the request to prepare and submit Plans to EPA are non-binding recommendations at this point in time.

B. Minimum Monitoring and Reporting Requirements for Storm Water Discharges

Current NPDES regulations at 40 CFR 122.44(i)(2) provide that all NPDES permits are to establish requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. In the August 16, 1991 proposal, EPA requested comment on six major options for modifying 40 CFR 122.44(i)(2) to provide minimum monitoring and reporting requirements specifically addressing storm water discharges associated with industrial activity.

In the August 16, 1991 proposal, the Agency identified a number of factors that it would consider when evaluating this issue:

Difficulties in Sample Collection—Collection of storm water samples may pose a number of potential difficulties. These difficulties include determining when a discharge will occur, safety considerations, the potential for a multiple discharge points at a single facility, the intermittent nature of the event, the limited number of events that occur in some parts of the country, and variability in flow rates.

Variability of Data—The types and concentrations of pollutants in storm water discharges associated with

industrial activity depend on a number of factors, including the nature of industrial activities occurring at the site, the nature of the precipitation event generating the discharge, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in the concentrations and types of pollutants in a given discharge.

Types of Permit Conditions—Permits for industrial process discharges and discharges from POTWs traditionally have incorporated numeric and/or toxicity effluent limitations as conditions. Monitoring reports for these discharges provide a direct indication whether the discharge complies with permit conditions. However, it is anticipated that permits for storm water dischargers will contain a variety of types of controls. While numeric or toxicity limitations are expected to be appropriate for some storm water discharges, permits for other storm water discharges are expected to contain requirements to implement best management or pollution prevention practices. In these cases, discharge sampling information may not provide as direct a link to compliance with permit conditions. However, effluent monitoring data can still play an important role in identifying priority facilities, providing information on sources and types of pollutants which can be evaluated when designing or modifying best management or pollution prevention practices, and evaluating the effectiveness of best management practices and pollution prevention measures.

Administrative Burdens on Permitting Agencies—Requiring each facility that discharges storm water associated with industrial activity to submit monitoring data at least annually would result in a significant increase in the number of discharge monitoring reports received by EPA Regions and authorized NPDES States.[7] Receiving annual monitoring reports containing complex technical information from each facility with a storm water discharge associated with industrial activity would require a significant amount of permitting resources dedicated to reviewing and filing these reports.

[7] EPA estimates that if all facilities with storm water discharges associated with industrial activity other than oil and gas facilities and inactive mining operations were required to submit a discharge monitoring report annually, almost 15% of all discharge monitoring reports collected annually under the NPDES program would be for storm water discharges associated with industrial activity.

Focused Permitting Efforts

The long-term permitting strategy discussed earlier in today's notice provides for a flexible, risk-based system for issuing permits and targeting priority discharges. Flexibility has been incorporated into the strategy to facilitate efforts by EPA and authorized NPDES States to identify priority discharges and conduct permit issuance activities which reflect Regional and State priorities. Discharge sampling data from targeted facilities can support the development of priorities and can be used to assist in assessing the achievement of water management goals. As priorities and risks within a State are identified and evaluated, classes of facilities will be targeted for more specific permit issuance activities (tiers II, III and IV of the strategy).

1. Overview of Proposed Options and Comments

In the August 16, 1991 proposal, EPA identified six major options (plus a no change option) for establishing minimum monitoring requirements in NPDES permits for storm water discharges associated with industrial activity. These options only addressed minimum requirements for discharge monitoring in NPDES permits. All options retained authority for NPDES permit authorities to require more stringent monitoring requirements where appropriate. The six options (plus the no change option) were as follows:

No Change Option: Case-by-case monitoring conditions in permits for storm water discharges, with a minimum requirement to report monitoring results at least annually.

Option 1: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement to report monitoring results at least twice per permit term.

Option 2: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement that facilities conduct annual sampling. Facilities would not be required to report monitoring information unless the information was requested in a permit or by the Director, but would be required to retain information.

Option 3: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement that facilities (other than those from oil and gas exploration or production operations and inactive mining operations where a past or present mine operator cannot be identified) conduct annual sampling. Facilities would not be required to report information unless the information was requested in a permit or by the Director, but would be required to retain information. For contaminated storm water discharges from oil and gas exploration or production operations or from inactive mining operations where a past or present mine operator cannot be identified, either case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement of annual sampling (without reporting) or, instead of sampling, a Professional Engineer's (PE) certification attesting that good engineering practices were being employed to meet appropriate permit conditions.

Option 4: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement that monitoring reports be submitted at least annually for targeted classes of storm water discharges associated with industrial activity located in the watershed of receiving waters that are sensitive to or impacted by storm water discharges.

Option 5: Case-by-case monitoring conditions in permits for storm water discharges with no minimum requirement to report monitoring results.

Option 6: Case-by-case monitoring conditions in permits for storm water discharges, with a minimum requirement for the first permit for the discharge that monitoring results be reported at least once a year. After a facility has submitted five years of data, monitoring conditions for storm water would be established on a case-by-case basis with no minimum requirement to conduct annual sampling.

In addition, the Agency indicated that it would consider developing a final regulation which combined aspects of several of the articulated options (see August 16, 1991 (56 FR 40957)). The various benefits and concerns with each option were discussed in the August 16, 1991 notice.

The comments received on the options reflected differing opinions regarding the need and use of monitoring in the NPDES storm water program. Some of the comments expressed views on the benefits and drawbacks of different monitoring strategies in different situations. An underlying theme that emerged from the comments was that a number of factors, such as the risk to water quality that different types and classes of storm water discharges associated with industrial activity present, the nature of permit conditions (e.g. such as numeric limitations and best management practices), and the nature of the operation of the facility should be considered when establishing

monitoring conditions in NPDES permits for storm water discharges.

Other commenters suggested that EPA should allow alternatives to monitoring. Some commenters urged the Agency to expand option 3 to allow other classes of facilities in addition to oil and gas operations to obtain a PE certification, to allow facility operators to conduct inspections, or certify compliance with a checklist of pollution prevention measures or best management practices (BMPs) in lieu of sampling. Other commenters suggested that other individuals were as qualified or more qualified than PEs to perform site inspections and that additional flexibility should be provided with regard to the inspection requirement. For example, some commenters indicated that certified construction inspectors were more appropriate for conducting inspections at construction sites than PEs, who might not be familiar with soil and erosion practices or storm water management technologies. Other commenters suggested that site personnel would typically be in the best position to evaluate the implementation of pollution prevention measures and BMPs.

Other comments urged EPA to consider the costs and technical difficulties of sample collection and analysis when establishing minimum monitoring requirements, and encouraged the Agency to consider alternatives to discharge sampling, such as allowing site inspections in lieu of monitoring. In the August 16, 1991 notice, EPA had requested comments on monitoring requirements for inactive mining operations, and some comments specifically addressed this issue.

2. Today's Rule

In response to comments, today's rulemaking adopts an approach that is a combination or hybrid of a number of options identified in the August 16, 1991 proposal, particularly options 3 and 5. The final rule provides for establishing monitoring conditions in NPDES permits for storm water discharges associated with industrial activity on a case-by-case basis. At a minimum, a permit for such a discharge must require the discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit and the plan or whether additional control measures are needed. The discharger must be required to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, or identifying any incidents of non-compliance. Such report and certification must be signed by a corporate official in accordance with 40 CFR 122.22.

Today's rule establishes a minimum requirement for annual inspections for most storm water discharges associated with industrial activity. The Agency believes that a minimum frequency of at least annual inspections is appropriate to ensure evaluation of changing conditions and practices at a site, (especially those caused by wet weather and winter conditions occurring throughout a year) and to ensure adequate implementation of pollution prevention measures on a regular basis. While option 3 of the August 16, 1991 proposal had requested comment on a minimum frequency of every three years for a PE certification for oil and gas operations and certain inactive sites, the Agency believes that providing additional flexibility in who conducts site inspections will sufficiently lower compliance costs in some cases to allow a higher frequency of inspections to be feasible. As discussed below, the Agency is providing additional flexibility in establishing monitoring or inspection requirements for storm water discharges from inactive mining operations. No commenters on the draft general permits in the August 16, 1991 Federal Register notice specifically indicated that it would be infeasible to comply with requirements in the draft general permits to conduct annual inspections. The Agency believes that a minimum annual frequency of inspections compensates for less formal requirements with respect to specifying who must conduct the inspection. A minimum annual frequency is also consistent with the minimum requirements for discharges other than storm water to report monitoring information at least annually.

A minimum of an annual inspection or report of monitoring results is not required for storm water discharges associated with industrial activity from inactive mining operations where annual inspections are impracticable. Rather, permits for storm water discharges from inactive mining operations may require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or provide for alternative requirements. This provision will provide additional flexibility to address inactive mine operations. Mining activities have a somewhat unique history of development and inactive mining sites can be dispersed diffusely in remote, hard to reach locations where employees may typically not be onsite to conduct site evaluations. In addition, the inactive nature of these sites may limit changes to potential for storm water discharges from the site to contain pollutants, thereby warranting less frequent inspections. The Agency anticipates that certification by Professional Engineers may often be appropriate for these sites given the nature of typical controls for these sites, and the limited amount of activity occurring at them. Alternative requirements may be appropriate for storm water discharges from inactive mining operations in some circumstances. For example, storm water discharges from inactive mining operations on Federal lands where an operator cannot be identified present unique circumstances because of the remote nature and high number of sites on large Federally owned areas.

The Agency believes that this rule will provide sufficient flexibility for permit writers to establish monitoring requirements that reflect the potential risk of the discharge and that are appropriately related to the nature of the permit conditions for a discharge. Today's regulatory modification does not preclude discharge sampling and reporting requirements in NPDES permits for storm water discharges associated with industrial activity. While today's rule change provides additional flexibility to establish monitoring requirements, it does not limit the authority of EPA or authorized NPDES States to establish sampling requirements where appropriate based on a consideration of risk or other factors.

The Agency recognizes that different types of permit conditions are appropriate for different types of storm water discharges. Numeric effluent limitations are appropriate for some classes of storm water discharges. End-of-pipe numeric effluent limitations are typically used for some types or classes of storm water discharges associated with industrial activity.[8] Typically, NPDES permits for these classes of discharges will contain numeric effluent limitations, and sampling requirements will be appropriate for these permits.

[8] For example, the Agency has issued numeric effluent limitation guidelines for ten classes of discharges that are composed entirely of storm water or of storm water combined with process water.

However, for many other types of storm water discharges associated with industrial activity, NPDES permits for the discharge will require the implementation of pollution prevention measures and/or BMPs. Where permits require the implementation of pollution prevention measures and/or BMPs, and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures and/or BMPs required by the permit are being effectively implemented and are in compliance with the terms of the permit may provide a better indication than discharge sampling of whether a facility is complying with the permit. As a result, the Agency believes that today's rule will also reduce discharge sampling burdens on some industrial facilities with storm water discharge permits that require the implementation of pollution prevention measures and BMPs rather than numeric effluent limitations, while providing more effective and efficient environmental benefits.

Today's rule does not affect the manner in which the NPDES regulations address discharges other than storm water associated with industrial activity. The provisions of 40 CFR 122.44(i)(2) will continue to require that NPDES permits for discharges other than storm water associated with industrial activity establish requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. In addition, today's rule does not change the manner in which the NPDES regulations address storm water discharges which are subject to an effluent limitation guideline (e.g. a minimum of annual monitoring is still required for these facilities).

3. Response to Comment

Some commenters questioned the value of sampling data for storm water discharges in certain situations. In response, the Agency believes that, in certain instances, storm water discharge monitoring data will play a number of critical roles in the NPDES program. As discussed above, some permits for storm water discharges associated with industrial activity will establish technology or water quality-based numeric limitations. Discharge monitoring reports will be an important means of assessing compliance with these requirements. Discharge monitoring, including monitoring requirements in permits that do not establish numeric limitations, plays a number of other functions in the permit program.

Discharge monitoring data can be used to assist in the evaluation of the risk of discharges by indicating the types and the concentrations of pollutant parameters in the discharge. Discharge monitoring data can also be used to support the development of future permit conditions and controls, assist in identifying sources of pollutants at a facility, assist in the evaluation of the effectiveness of pollution prevention measures and BMPs, and assist in identifying potential water quality-based impacts. Storm water discharge monitoring data will have an important role, along with other information, in identifying facilities or classes of facilities where tier II, III and IV permit issuance activities are appropriate.

Several commenters offered a number of suggestions for monitoring programs for storm water discharges. In response, EPA generally recognizes that there are a number of innovative and risk-based approaches to developing monitoring strategies for storm water discharges associated with industrial activity. For example, monitoring requirements for storm water discharges associated with industrial activity can be focused on those discharges located in watersheds that are impacted by or sensitive to storm water discharges as proposed in option 4. In order to encourage States to explore efficient, innovative and cost-effective monitoring programs, today's rule provides flexibility to establish different monitoring strategies and does not adopt option 4, although the minimum requirements adopted today do not preclude the use of an option 4 type approach where appropriate. (The same is true for options 1, 2, or 6; EPA or authorized NPDES States retain the flexibility to use these types of approaches on a permit-specific basis). The Agency believes that this approach offers the greatest potential for using permits to generate information on priority storm water discharges that can be used to assist in the development of controls.

Many commenters urged EPA to provide sufficient regulatory flexibility to permit writers to establish discharge sampling and reporting requirements for storm water discharges associated with industrial activity on a case-by-case basis. Many commenters favored establishing discharge sampling requirements in a risk-based manner. A number of these commenters suggested that it was important to sample storm water discharges associated with industrial activity from priority classes of facilities, but that across-the-board monitoring requirements for all facilities with storm water discharges associated with industrial activity may not be an appropriate or cost-effective use of resources. A number of justifications were provided for favoring a flexible approach including: (1) Regulatory flexibility could allow establishing monitoring and reporting requirements in a risk-based manner; (2) some types of facilities may not be significant contributors of pollutants when they were in compliance with pollution prevention measures or plans; (3) in some situations site inspections would be more appropriate than monitoring for determining permit compliance; (4) EPA and authorized NPDES States have limited ability to effectively review data; (5) the potential burdens on small businesses and facilities in arid climates could be significant; (6) there would be difficulties in characterizing storm water discharges with sampling data; and (7) EPA needs to focus on storm water discharges with the highest risk. Some commenters summarized these concerns by indicating that they believed that for some storm water discharges associated with industrial activity, overly broad discharge monitoring requirements could be counterproductive toward the goals of the program, as significant resources would have to be expended collecting and analyzing discharge samples, thereby limiting available resources at some facilities, such as certain small businesses, to implement measures that would result in the removal of pollutants in their storm water discharges. Other commenters raised concerns regarding sampling storm water discharges from specific classes of industries. For example, representatives of the construction industry contended that monitoring storm water from construction sites has limited usefulness due to the changing nature of the activity.

As discussed above, EPA has designed today's rule to address all of these concerns. Since today's rule provides additional flexibility in the NPDES regulatory framework to establish monitoring requirements for storm water discharges associated with industrial activity, the Agency believes that the concerns raised by the commenters, where appropriate, can be addressed during the permit issuance process under the flexible regulatory framework established by today's rule. In particular, the Agency believes that today's rule, which relies on site inspections as minimum requirements, provides a more efficient and cost-effective approach for evaluating the

effectiveness of permit program implementation. The Agency notes that site inspections are typically an integral part of pollution prevention measures and best management practices for storm water discharges associated with industrial activity.[9]

Option 3 of the August 16, 1991 proposal would have provided flexibility when establishing monitoring requirements for storm water discharges from oil and gas exploration or production operations or from inactive mining operations where a past or present mine operator cannot be identified by allowing either a minimum requirement of annual sampling (without reporting) or, instead of sampling, a Professional Engineer's (PE) certification attesting that good engineering practices were being employed to meet appropriate permit conditions. The Agency requested comment on whether the PE certification was appropriate and whether it should be extended to other classes of facilities.

Some commenters suggested that other individuals were as qualified or more qualified than PEs to perform site inspections and that additional flexibility should be provided with regard to the inspection requirement. For example, some commenters indicated that certified construction inspectors were more appropriate for conducting inspections at construction sites than PEs who might not be familiar with soil and erosion practices or storm water management technologies. Other commenters suggested that site personnel would typically be in the best position to evaluate the implementation of pollution prevention measures and BMPs. In response, today's rule provides flexibility to allow site inspections to be conducted by persons other than PEs. While the Agency believes it is appropriate to require PE certifications in certain circumstances, the approach taken with today's rule will provide additional flexibility in developing these requirements.

A number of commenters suggested that PE certifications were appropriate for classes of storm water discharges associated with industrial activity other than those from oil and gas operations. These commenters indicated that such a certification could, in many cases, be less burdensome than discharge monitoring, and that such certifications could provide a closer link to compliance with pollution prevention measures and best management practices. As discussed above, today's rule provides that requirements to conduct annual site inspections can be established as minimum monitoring requirements in permits for storm water discharges. The Agency agrees with these comments to the extent that it is convinced that site inspections can provide an appropriate means for evaluating compliance with pollution prevention measures and best management practices for storm water discharges from different types of facilities. In addition, site inspections can be less burdensome than sampling storm water discharges for some facilities. Requiring annual inspections and reviewing documentation as part of routine compliance inspections or at the time of permit reissuance also makes effective use of the limited resources of permit issuance authorities, by allowing permit issuing agencies more time to focus on issues other than receiving, reviewing and filing monitoring data.

Some commenters indicated that EPA and authorized NPDES States should only require facilities to monitor storm water discharges associated with industrial activity where the permit issuing agencies can evaluate the data. The Agency recognizes that EPA and some authorized NPDES States cannot provide adequate resources to ensure that all discharge monitoring data can be inspected. However, the Agency believes that even where discharge monitoring data is not reviewed on an ongoing basis by a permit issuing authority, the data can still be very useful. Facilities which discharge should review their discharge sampling data to identify sources and types of pollutants in discharges, and to evaluate the effectiveness of pollution prevention measures and BMPs. Where an NPDES permit does not require a discharger to report sampling data, EPA or an authorized NPDES State will typically be able to request the data on a case-by-case basis, or request that the data be submitted for consideration prior to permit reissuance.

Some commenters expressed concerns about minimum monitoring requirements for storm water discharges from inactive mining operations. EPA agrees that in some circumstances, discharge sampling or annual inspections may be particularly burdensome at inactive mining operations, because mining operations often are found in remote areas that are not necessarily supported by infrastructure that allows easy access. In addition, at some inactive mining operations, inspections may not be as integrally related to pollution prevention measures for storm water discharges associated with industrial activity, as pollution prevention measures will not focus on day to day management activities. EPA has modified today's rule accordingly.

A number of commenters addressed the specific monitoring requirements in the draft general permits for storm water discharges associated with industrial activity in the August 16, 1991 notice. The Agency wants to clarify that the amendments to 40 CFR 122.44(i)(2) in today's rule establish minimum monitoring and reporting requirements for NPDES permits for storm water discharges associated with industrial activity. The Agency will respond to comments on the specific monitoring requirements in the draft general permits in the August 16, 1991 notice as part of the fact sheets and/or administrative records for those permits.

C. Application Requirements for General Permits

The provisions of 40 CFR 122.21(a) exclude persons covered by general permits from requirements to submit individual permit applications. Currently, the general permit regulations at 40 CFR 122.28, however, do not address the issue of how a potential permittee is to apply to be covered under a general permit. Rather, conditions for filing an application to be covered by a general permit (typically called a Notice of Intent (NOI)) have been established on a case-by-case basis. NOI requirements established in general permits operate instead of individual permit application requirements for the discharges covered by the general permit.

1. August 16, 1991 Proposal

The August 16, 1991 notice proposed several modifications to the NPDES regulatory framework for general permits. (The proposed changes addressed NPDES general permits for all classes of discharges and sludge disposal, and was not limited to storm water discharges). The proposal addressed procedures for becoming authorized to discharge under a general permit, minimum requirements for NOIs to be covered by a general permit, and deadlines for submitting NOIs.

[9] For example, EPA noticed draft general permits for storm water discharges associated with industrial activity on August 16, 1991 (56 FR 40948) that would require permittees other than construction activities to conduct visual inspections of designated equipment and plant areas for evidence of, or the potential for, pollutants entering the drainage system and to conduct annual site inspections to verify the description of potential pollutant sources and controls that are being implemented in storm water pollution prevention plans (see parts III.C.4.b.(9) and III.C.4.c. (56 FR 40996)). Under the draft general permits, permittees that operate construction activities are required to inspect all erosion controls on the site at least once every seven calendar days (see part III.C.5.b.(5), 56 FR 40999).

2. Today's Rule

Today's rule finalizes modifications to the NPDES regulatory framework for general permits addressing procedures for becoming authorized to discharge under an NPDES general permit, minimum requirements for notices of intent (NOI) to be covered by a general permit, and deadlines for submitting NOIs.

The regulatory framework provided by today's rule requires that, except for in two situations, an NOI must be submitted by a discharger (or treatment works treating domestic sewage) in order to be authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) under an NPDES general permit. The first situation where an NOI will not have to be submitted to authorize discharges under a general permit is where the Director notifies the discharger that its discharge is covered by the permit. The second situation where NOIs are not required under a general permit is where the Director provides in the general permit that a submission of an NOI is not required, where the Director finds that an NOI requirement is inappropriate for that general permit.

In making a decision that an NOI is inappropriate for a general permit, the Director will consider the type of discharge, the expected nature of the discharge, the potential for toxic and conventional pollutants in the discharges, the expected volume of the discharges, other means of identifying discharges covered by the permit, and the estimated number of discharges to be covered by the permit. Also, in making this decision, the Director is required to describe the reasons for not requiring an NOI in the fact sheet of the general permit. Under today's rule, such a finding could only be made for discharges other than discharges from POTWs, combined sewer overflows (CSOs), primary industrial facilities, and storm water discharges associated with industrial activity. The Agency believes that, given the potential environmental significance and NPDES program priorities associated with discharges from POTWs, CSOs, primary industrial facilities, and storm water discharges associated with industrial activity, it is appropriate to require NOIs in all general permits for these discharges.

Today's rule establishes minimum requirements for NOIs in NPDES general permits at 40 CFR 122.28(b)(2)(ii). This provision requires that the contents of the notice of intent be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). This provision specifies minimum NOI requirements. General permits may require that additional information be reported in NOIs where appropriate.

The NOI provisions of this rule allow the Director to establish alternative notice of intent requirements for general permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified. The Agency is currently developing general permits for storm water discharges from inactive mines, inactive oil and gas operations and inactive landfills occurring on Federal lands. During the process of developing and issuing these permits, EPA will work with authorized NPDES States to determine appropriate NOI requirements for these permits given the unique nature, distribution, and occurrence of these discharges.

Today's rule also provides that general permits requiring the submittal of NOIs shall specify deadlines for submitting notices of intent and the date(s) when a discharger is authorized to discharge under the permit.

The Agency believes that deadlines for submittal of an NOI are an important part of NOI requirements, and that general permits should state when NOIs must be submitted. In addition, the permit should clarify when a discharge is authorized under the permit. In many cases, the Agency anticipates that general permits will provide that a discharger obtains coverage under the general permit after a specified time period passes after the date of submittal of an NOI. This approach will provide the NPDES authority with an opportunity to review the NOI prior to the authorization of the discharge. In other situations, it may be appropriate for general permits to provide that a discharge is authorized as soon as a complete and timely NOI is received.

The August 16, 1991 notice proposed in 40 CFR 122.28(b)(2)(iii) that unless a general permit provided alternative time periods, an NOI was to be submitted 60 days before the date of intended permit coverage. The final rule amends this paragraph such that no default deadline for submission is specified. Rather, the deadline for NOI submission will be established on a permit-specific basis. Today's rule simply requires that this issue be addressed in the general permit, but leaves the permitting authority this decision of which approach is most appropriate. The approach in the final rule will avoid the confusion that arose with the proposed regulatory language used in the August 16, 1991 notice. Today's rule also requires that NPDES general permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge either in accordance with the permit upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Director. EPA has rewritten the proposed language in 40 CFR 122.28(b)(2)(iv) to make this provision clearer, but has not changed its intent. The Agency believes that the approach taken in the final rule retains the flexibility of the proposal while accomplishing the same purpose.

The Agency is finalizing this regulatory framework for NOIs with NPDES general permits to encourage the use of general permits, to provide for more consistent NOI requirements, and to ensure that dischargers covered by general permits provide appropriate information. Further, the Agency believes that today's regulatory framework provides a regulatory framework that is consistent with existing practices of EPA and authorized NPDES States.

3. Response to Comments

Most commenters addressing the proposed framework for NOIs supported the concept as a useful tool for the NPDES program. Some of these commenters urged EPA to use NOIs as a tool to minimize burdens on the authority issuing permits and reduce costs relative to submitting individual permit applications. Commenters indicated that an additional reason for using NOIs was to assist in clarifying whether a facility was covered by a given general permit.

The Agency agrees with these comments. NOIs serve a number of functions. NOI requirements in general permits can establish a clear accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, and their identity, location and receiving waters. NOIs can be used to develop a data base of facility-specific information. NOIs can be used as a screening tool to identify discharges where individual permits are

appropriate. For example, the identification of discharges to receiving waters with impaired water quality can be used to target facilities for priority permitting efforts. Also, the NOI can be used to identify classes of discharges appropriate for more specific general permits covering a more limited set of discharges. The NOI can provide information needed by the Director to notify dischargers that a more specific general permit was issued. The NOI also can identify the permittee to provide a basis to develop and implement enforcement and compliance monitoring strategies and priorities. In addition, the administrative burdens on the permitting issuing agency and the costs to dischargers can be reduced by replacing more complicated permit application requirements with simplified requirements.

One State commented that EPA should not mandate by regulation the information required in an NOI, which it believed should be left to the State or EPA Region issuing a general permit. In response, the Agency believes that today's regulatory framework provides sufficient flexibility for developing NOI requirements, and that the minimum information requirements of today's rule represent essential information necessary for meeting the program objectives outlined above. Under today's rule, the minimum requirements for NOIs include the legal name of the owner or operator and the facility name and address. EPA believes that this information is essential to identify the location of the facility for compliance purposes and to provide mailing addresses necessary to conduct any correspondence. The minimum NOI requirements also include a description of the type of facility or dischargers. This description is necessary to provide information to screen whether the discharge is eligible for coverage under the general permit and to allow the permit writer to begin to identify priority discharges. Finally, the minimum NOI requirements include the receiving stream(s). This information is necessary to adequately identify the discharges to impaired receiving waters where water quality-based permits are necessary.

Some commenters indicated that they believed that all discharges should be required to submit an NOI. Various reasons were provided to support this approach, including that the NPDES authority needed to know of all facilities that discharged storm water to a given water body, and that dischargers should not be required to comply with a permit unless they submit a notification. In response, the Agency believes that most general permits will require the submittal of NOI. However, there may be some situations where it may be more appropriate to have the Director notify dischargers that they are covered by a general permit or that NOI requirements are otherwise not appropriate.

For example, issuing a general permit without NOI requirements may be an appropriate way for EPA and authorized NPDES States to minimize administrative burdens and compliance costs in permits for small discharges which have been determined to have minimal or no impacts on receiving waters. Today's regulation provide some flexibility to address these situations.

In the August 16, 1991 notice, EPA requested comment on whether it is appropriate to require NOIs for the large number of contaminated storm water discharges associated with industrial activity from oil and gas exploration and production operations. Most commenters on this issue indicated that they thought NOIs should be required in general permits for storm water discharges from oil and gas operations. One State commented that it believed that it would be inappropriate to exclude a class of discharges from the requirements to submit an NOI unless there is an alternative method that can and will be used to track these discharges. A different commenter indicated that oil and gas operations were adequately monitored through the Spill Prevention Control and Countermeasure (SPCC) program and that NOIs for NPDES general permits would not be necessary. A number of the commenters expressed confusion over the relationship between this provision and section 402(1)(2) of the CWA[10], and suggested that requiring NOIs in NPDES permits for storm water discharges from oil and gas operations would minimize this confusion.

After evaluation of the comments, EPA believes, that except for the situation of inactive oil and gas operations on Federal lands discussed below, it is not appropriate to exclude contaminated storm water discharges associated with industrial activity from oil and gas exploration and production operations from the minimum NOI requirements, and therefore today's rule does not treat storm water discharges associated with industrial activity from oil and gas operations differently than other storm water discharges associated with industrial activity in this regard. As a result, today's rule does not contain a specific reference to storm water discharges from oil and gas operations. The Agency believes that NOI requirements in general permits for storm water discharges from oil and gas operation will provide for a clear tracking mechanism that is currently unavailable under the SPCC program[11]. In addition, as was pointed out by commenters, the NOI process can be used to identify facilities with contaminated runoff, and therefore minimize confusion with respect to the provisions of section 402(1)(2) of the CWA.

One commenter requested clarification on the procedures that would be followed to ensure that permits requiring Director notification instead of facility submission of an NOI are in compliance with the procedural requirements of the CWA and the NPDES regulations. The Agency does not believe that today's rule conflicts with the NPDES regulations or the CWA. The Agency believes that the existing NPDES regulations provide for adequate public notice and public comment opportunities when general permits are issued. (See 40 CFR 124.10,

[10] Section 402(1)(2) of the CWA provides that NPDES permits shall not be required for storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operation. EPA published permit application regulations consistent with section 402(1)(2) on November 16, 1990 (55 FR 480030). These regulations require permit applications for discharges composed entirely of storm water associated with industrial activity from oil or gas exploration, production, processing, or treatment operations, or transmission facilities only when a discharge of storm waters results in a discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21, 40 CFR 302.6, or 40 CFR 110.6 at anytime since November 16, 1987, or the discharge contributes to a violation of a water quality standard. (see 40 CFR 122.26(c)(1)(iii)). Permit applications are not required for a discharge composed entirely of storm water from a mining operation unless the discharge comes into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

[11] EPA requested comment on using information collected under the SPCC program to track storm water discharges. However, this approach has a number of limitations, including that the SPCC program currently does not require facilities subject to SPCC requirements to submit notifications. In addition, many facilities subject to the SPCC program are not subject to the NPDES storm water program either because they do not have a storm water discharge to waters of the United States or because they are not activities that are addressed by the regulatory definition of storm water discharge associated with industrial activity at 40 CFR 122.26(b)(14) (e.g., certain pipelines).

124.11, and 124.57.) The Agency wants to point out that the NPDES regulations require certain opportunities for the public to comment during the permit issuance process, and provide for permit appeal after the permit is issued. In addition, 40 CFR 122.28(b)(2)(iii) provides that for EPA issued permits, any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit.

One commenter requested clarification on the type of notification that must be provided by the Director to a discharger where the discharger is not required to submit an NOI. In response, the Agency believes that in most cases, the Director will notify dischargers of coverage in writing.

One commenter requested clarification on whether a discharger that is not required to submit an NOI, but rather is notified by a Director, will be subject to permit fees. The Agency wants to clarify that this rulemaking does not address permit fees.

One commenter, while supporting the requirement that an NOI be submitted, indicated that EPA could reduce its paperwork load by issuing general permits for storm water discharges from construction sites that required dischargers to notify municipalities instead of the NPDES permit authority. EPA disagrees with this approach. Submitting NOIs to municipalities but not requiring that an NOI be submitted to the Director may not assure that EPA or authorized NPDES States receive adequate information to effectively implement the NPDES program for these discharges.

In the August 16, 1991 notice, EPA proposed that general permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. A federal land management agency commented that inactive landfills on Federal lands are in some ways analogous to inactive mines and inactive oil and gas operations and should be treated similarly. EPA agrees with this comment and accordingly today's rule allows alternative notice of intent requirements in general permits for storm water discharges associated with industrial activity from inactive landfills on Federal lands.

One State urged EPA not to refer to NOIs as permit applications. They were concerned that calling NOIs permit applications would trigger certain public notice requirements under State law. They further argued that the purpose of NOIs are significantly different than permit applications, and that the cited State law provision should not apply. In response, EPA recognizes the differences between the purpose of a notice of intent and an individual permit application. Individual permit applications contain a significant amount of site-specific information that is typically used for the development of individual permit conditions. NOIs typically contain only general information and are used for screening and compliance purposes rather than for the development of permit conditions. However, the distinction between individual applications and NOIs as they relate to public notice requirements in various State laws is a question of interpretation of those State laws which EPA does not attempt to answer in this notice. EPA notes however, that it considers submission of an NOI to constitute a permit application for purposes of federal regulatory provisions which provide that a timely reapplication of a federal permit or license continues the effectiveness of the existing permit pending action by the Director. (See 40 CFR 122.6).

In the preamble to the August 16, 1991 notice, EPA discussed public accessibility to lists of NOIs, but did not publish proposed regulatory language addressing this issue. EPA does not intend to address this issue in this rulemaking, but will be addressing the issue in future rulemakings.

D. Deadline for Part 2 of Group Applications.

1. November 5, 1991 Proposal

On November 5, 1991, (56 FR 56555), EPA requested comments on extending the deadline for submitting part 2 of the group application from May 18, 1992 to October 1, 1992. In the November 5, 1991 notice, the Agency indicated that this extension would provide an appropriate opportunity to conduct sampling to support the Part 2 application and would allow for permit issuing agencies to issue general permits.

2. Today's Rule

EPA received over 60 comments on the November 5, 1991 proposal. After careful consideration of these comments, the Agency is extending the deadline for submitting part 2 of the group applications for storm water discharges associated with industrial activity from May 18, 1992 to October 1, 1992 as proposed.

EPA is granting this extension to provide an appropriate opportunity to conduct sampling to support the part 2 application. This regulatory modification will provide a more equitable framework for submitting permit applications for storm water discharges associated with industrial activity. It will also allow for permit issuing agencies to issue general permits prior to the completion of the group application process.

3. Response to Comments

All of the comments received on the November 5, 1991 proposal to extend the regulatory deadline for submitting part 2 of the group application supported an extension. A number of reasons were provided to justify the extension, including the difficulty associated with sampling storm water discharges from facilities located in arid and northern regions during winter months, the need for time to allow for the preparation of guidance documents, training personnel in sampling techniques, and conducting analytical work. A number of commenters supported October 1, 1992 as the deadline for part 2 of the group application. In general, these commenters expressed their belief that the deadlines for submitting part 2 of the group application and individual permit applications for storm water discharges associated with industrial activity should be the same. A number of reasons were given for supporting this approach, including, that this would be the most equitable approach, the regulated community would have a clearer choice of application options, and one deadline would limit confusion. EPA agrees with these concerns, and as is discussed above, is extending the deadline for submitting part 2 of the group application from May 18, 1992 to October 1, 1992.

Some commenters favored extending the deadline for submitting part 2 of the group application beyond October 1, 1992. Some of these commenters suggested that part 2 of the group application should not be required until general permits for storm water discharges associated with industrial activity were issued. These commenters indicated that this approach would ensure that dischargers would have three options for applying for a permit, (e.g. participating in a group application, submitting an individual application, or submitting an NOI to be covered under a general permit). This would allow dischargers to select the most cost-effective approach allowable under the NPDES regulatory framework. Other commenters suggested that participants in a group should be given one complete year from the date after the group

receives notice of approval of the part 1 application.

EPA notes that the extension to October 1, 1992 provides authorized NPDES States with additional time to issue general permits for storm water discharges associated with industrial activity. On August 16, 1991, (56 FR 40948), EPA published a proposal requesting public comment on draft general permits for storm water discharges associated with industrial activity in States and territories without authorized NPDES programs.[12] The Agency intends to make every effort to issue these general permits in the spring of 1992.

However, EPA has decided against basing the deadline for submitting part 2 of the group applications on the date that general permits are issued by individual States because of the potential confusion and uncertainty that would arise. Although the Agency proposed draft general permits for storm water discharges in States without authorized State NPDES programs in one notice, it may not finalize all of these permits on the same date. The Agency expects that various region-specific, State-specific, or industrial category-specific issues may take different amounts of time to address. It should also be noted that the August 16, 1991 proposal does not address general permits in authorized NPDES States. Each authorized NPDES State that will issue general permits for storm water discharges associated with industrial activity will have to go through the procedures for issuing general permits of that State. Different permit issuance procedures, along with other factors, will result in these permits being issued at different times. All of these factors indicate that a tremendous amount of uncertainty and confusion would result if EPA attempted to tie regulatory deadlines for submitting permit applications to the dates when general permits are issued for particular States. This is particularly important to the group application process where facilities from many different States may be in the same group.

In addition, the Agency anticipates that there will be situations where the permitting authority determines that general permits are inappropriate for a given class of storm water discharges. Additional confusion would arise in these situations if application deadlines were tied to the dates of general permit issuance. The Agency is also concerned that unacceptable delays may result under this approach in States where the issuance of a general permit is delayed.

EPA also disagrees with the suggestion that the deadlines for submitting part 2 of the application should be based on the date on which a part 1 application is accepted. EPA believes that establishing a fixed deadline of October 1, 1992 for part 2 of the group application is warranted for the same reasons that the Agency articulated above and in the proposal. This approach provides an equitable deadline for these facilities, reduces confusion and uncertainty in the regulated community, and provides sufficient time to complete the sampling necessary to obtain quantitative data.

E. Clarification for Part 2 of Group Applications

The November 16, 1990 regulations established procedures for group applications for storm water discharges associated with industrial activity. The group application process allows for facilities with similar storm water discharges to file a single two part permit application. Part 1 of a group application includes a list of the facilities applying, a narrative description summarizing the industrial activities of participants of the group, a list of significant materials exposed to precipitation that are stored by participants and material management practices employed to diminish contact of these materials by precipitation (see 40 CFR 122.26(c)(2)(i)). In addition, the part 1 application must identify the group participants that will submit quantitative data (sampling data) in part 2 of the group application. These participants must be representative of the group.

In part 2 of the group application, the subset of facilities identified in the Part 1 application must submit quantitative data. The provisions of 40 CFR 122.26(c)(2)(ii) establish a minimum criteria for identifying facilities from which sampling data must be submitted. EPA had proposed that, in general, groups submit data from at least 10 percent of the facilities in the group, with a minimum of 10 facilities submitting data (December 7, 1988 (53 FR 49435)). In the final rule, EPA allowed groups of 4 to 10 members to apply if 50 percent of the facilities submitted data (November 16, 1990 (55 FR 48067)).

During the group application process, the regulated community exhibited some confusion regarding the minimum number of facilities that must submit sampling data for groups with 11 to 99 members. For groups with 11 to 99 members, some groups have interpreted the language in the November 16, 1990 regulations to require 10 percent of the facilities to submit sampling data, while other groups have interpreted the language to require a minimum of 10 facilities to submit sampling data.

In today's action, EPA wants to clarify that for groups with 20 or fewer members, at least 50 percent of the dischargers participating in the group must submit quantitative data. For example, at least nine facilities must submit quantitative data if a group is composed of 17 members. For groups with 21 to 99 members, at least 10 dischargers participating in the group must submit quantitative data. For example, at least ten facilities must submit quantitative data if a group is composed of 25 members. For groups with 100 to 1,000 members, at least 10 percent of the dischargers participating in the group must submit quantitative data. For groups with more than 1,000 members, no more than 100 dischargers participating in the group must submit quantitative data.

For groups with more than 10 members, either a minimum of two dischargers from each precipitation zone indicated in appendix E of 40 CFR part 122 in which ten or more members of the group are located, or one discharger from each precipitation zone indicated in appendix E of 40 CFR part 122 in which nine or fewer members of the group are located, must be identified to submit quantitative data. For groups of 4 to 10 members, at least one facility in each precipitation zone in which members of the group are located must submit data. EPA has made a correction to the group application requirements to reflect the above, which represents EPA's original intent in the November 16, 1990 rule.

F. Transportation Act Deadlines

Section 1068 of the Transportation Act addresses permit application deadlines for storm water discharges associated with industrial activity that are owned or operated by municipalities. Today's rule codifies three changes to existing regulatory deadlines to reflect the new provisions of section 1068. The first two modifications address individual application deadlines, and the third addresses group application deadlines.

[12] The notice addresses draft general permits in 12 States (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, ID), and six Territories (District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) without authorized NPDES State programs; on Indian lands in AL, CA, GA, KY, MI, MN, MS, MT, NC, ND, NY, NV, SC, TN, UT, WI, and WY; located within federal facilities and Indian lands in CO and WA; and located within federal facilities in Delaware.

The deadlines for submitting individual permit applications for storm water discharges associated with industrial activity that are owned or operated by municipalities are consistent with the October 1, 1992 regulatory deadline that EPA established on November 5, 1991 (56 FR 56548) with two exceptions:

(1) Municipal facilities that have been identified in a part 1 group application that has been submitted in a timely manner where either the group application is denied or the particular facility is rejected from the group, are not required to submit an individual application until the 180th day following the date on which the denial or rejection is made; and

(2) Facilities owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill are not required to submit a permit application at this time unless a permit is required under either section 402(p)(2) (A) or (E) of the CWA.

With regard to facilities that are either part of a group that has been denied or which are individually rejected from a group, today's rule codifies alternative deadlines for storm water discharges associated with industrial activity from facilities that are owned or operated by a municipality and that are rejected as members of a part 1 group application. Such dischargers shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or October 1, 1992, whichever is later.

With respect to facilities owned or operated by municipalities with a population of 100,000 or less, EPA believes that Congress intended this language to place all of their storm water discharges (except for those from airports, powerplants and uncontrolled sanitary landfills) into Phase II of the storm water program.

Today's rule also codifies the Transportation Act's alternative deadlines for group applications for storm water discharges associated with industrial activities that are owned or operated by municipalities with a population of less than 250,000. Reflecting the new provisions of Section 1068 of the Transportation Act, the group application deadlines for these facilities are now May 18, 1992 for part 1 applications and May 17, 1993 for part 2 applications.

EPA also wants to clarify that the Transportation Act did not affect any of the regulatory application deadlines for storm water discharges associated with industrial activity from facilities that are either not owned or operated by a municipality or that are owned or operated by a municipality with a population of 250,000 or more. The legislative history for the Transportation Act clarified that "nothing in the conference report affects most of the dates for submitting stormwater permit applications established in EPA's recent rulemaking published in the **Federal Register** on November 5, 1991. * * * The conference report, while silent on the deadlines for these privately owned industries, is not intended to override the dates established in EPA's rulemaking action." (Vol. 137 Cong. Rec. H11509 (daily ed. November 26, 1991), Rep. Hammerschmidt). Thus, the permit application deadlines for storm water discharges associated with industrial activity from privately owned and operated facilities, including those that discharge through a municipal separate storm sewer to waters of the United States, are not changed by today's rule with the exception of the part 2 application deadlines discussed elsewhere in today's notice. Also, where a facility is privately owned and operated, but has a service contract with a municipality, the facility is not considered to be "municipally operated". For example, a privately owned and operated landfill that receives municipal waste pursuant to a contract with a municipality or some other form of reimbursement from a municipality can not avail itself of the application deadline extensions in the Transportation Act, which apply only to facilities owned or operated by municipal governments.

As outlined above, section 1068 of the Transportation Act contains special provisions for municipalities with a population of less than 100,000. Section 1068(c) of the Transportation Act defines two classes of industrial facilities that are owned or operated by municipalities with a population of less than 100,000. The first group of facilities is comprised of airports, powerplants, and uncontrolled sanitary landfills that are owned or operated by a municipality with a population of less than 100,000. It is clear that Congress did not intend in section 1068(c) to change the existing individual application deadlines for these discharges. Group application requirements for storm water discharges associated with industrial activity from these facilities are addressed by section 1068(b) of the Transportation Bill. As discussed above, the group application deadlines for these facilities are May 18, 1992 for Part 1 applicaitons and May 17, 1993 for part 2 applications.

The second group is comprised of facilities with storm water discharges associated with industrial activity other than airports, powerplants or uncontrolled sanitary landfills that are owned or operated by municipalities with a population of less than 100,000. Section 1068(c) provides that EPA shall not require this second group of industrial facilities to apply for or obtain a permit before October 1, 1992, unless a permit is required under either section 402(p)(2) (A) or (E) of the CWA.

With respect to this second group of facilities, today's rule reserves the regulatory deadlines for storm water applications. The Agency intends to address these facilities in a manner that is similar to other storm water discharges addressed by section 402(p)(1) or the CWA.[13] Currently, the Agency intends to evaluate storm water discharges associated with industrial activity that are owned or operated by a municipality with a population of less than 100,000 (except for those from powerplants, uncontrolled sanitary landfills and airports) along with other storm water discharges addressed by section 402(p)(1) in two studies required under section 402(p)(5) of the CWA. These studies will be used to support the development of regulations under section 402(p)(6).[14] It is clear from the legislative history of the Transportation Act that Congress intended to address these discharges in this manner, i.e., as discharges subject to the permit moratorium of section 402(p)(1) of the CWA. "EPA defined industrial activity in such a way as to require many cities with a population under 100,000 to make application for stormwater prmits, notwithstanding the moratorium on permit requirements that the Congress thought it was puting in place * * * This legislation will clarify that small cities need not apply for permits associated with some of the industrial facilities they own or operate until October 1, 1992, [the] date for the general moratorium on their permit requirements." (Vol. 137 Cong. Rec. S18596 (daily ed. November 27, 1991), Sen. Chafee). "[M]unicipalities with populations of less than 100,000 would

[13] Section 402(p)(1) of the CWA creates a moratorium on issuing NPDES permits until October 1, 1992 for storm water discharges that are not identified in section 402(p)(2) of the CWA.

[14] Section 402(p)(6) of the CWA requires EPA, in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992, which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must establish, at a minimum, (A) priorities, (B) requirements for State Storm Water Management Programs, and (C) expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements as appropriate.

not be required to apply for permits for stormwater discharges associated with industrial activities except for power plants, uncontrolled sanitary landfills, and airports." (Vol. 137 Cong. Rec. H11509 (daily ed. November 26, 1991). Rep. Hammerschmidt).

1. Determining the Population of Municipalities

The Transportation Act establishes phased requirements for NPDES permits for storm water discharges associated with industrial activity from facilities that are owned or operated by municipalities with specified populations. However, the Transportation Act uses a different classification scheme than is used in section 402(p) of the CWA to define classes of municipal separate storm sewer systems. Under section 402(p) of the CWA, municipal separate storm sewer systems are classified on the basis of population served by the system. Under the Transportation Act, the population used for classifying industrial operations owned or operated by municipalities is the population of the municipality. This distinction is important because a number of municipal entities with a population of 100,000 or more are not addressed by the regulatory definitions of large and medium municipal separate storm sewer systems.

40 CFR 122.26(b)(4) and (7) specifically identify 173 cities and 47 counties as having large or medium municipal separate storm sewer systems (e.g. systems serving a population of 100,000 or more).[15] While these definitions identify all incorporated cities with a population of 100,000 or more, they only specifically identify 47 of the 447 counties with a population of 100,000 or more based on the 1990 Census.[16] In addition, other types of municipal entities which may own or operate storm water discharges associated with industrial activity are not specifically addressed by the regulatory definition of large and medium municipal separate storm sewer systems. Examples include; sanitary sewer districts, flood control districts, and unincorporated towns and townships.

In providing phased requirements for different storm water discharges associated with industrial activity that are owned or operated by municipalities, EPA believes that a primary concern of Congress was the economic burdens placed on municipalities with a smaller population base over which to spread costs. In general, when determining the population of a municipal entity, EPA will look at the general population or service population of the municipal entity.

For the purpose of today's rule, the 1990 Census will be used to determine the population of counties. Service populations will be used to determine the population of sewage treatment districts which operate publicly owned treatment works (POTWs). Where one sewer district operates a number of plants, the entire service population of the district will be used to determine the applicable population classification of all of the treatment works operated by the district.[17] Populations within service districts will be used to determine the populations of flood control districts and other municipal entities with service populations. The State population will be used to determine the population of State DOTs.[18] Where an industrial facility is owned or operated by more than one municipality, then EPA intends to use the combined populations of the appropriate municipalities in determining population thresholds.

EPA believes that the distinction between the population of a municipality and the population served by a municipal separate storm sewer system is appropriate and was intended by Congress. In the November 16, 1990 rulemaking, EPA noted inter-jurisdiction complexities associated with municipal governments developing controls for storm water into such large and medium systems played a role in defining the regulatory terms large and medium municipal separate storm sewer systems. However, such concerns do not appear to be as evident with industrial facilities that are owned or operated by municipal entities.

2. Uncontrolled Sanitary Landfills

Section 1068(c) of the Transportation Act provides that facilities owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill are not required to apply for permit applications at this time unless a permit is required under either section 402(p)(2) (A) or (E) of the CWA.

Section 1068(d) of the Transportation Act defines the term "uncontrolled sanitary landfill" to mean a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon and runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act. Today's action codifies this definition at 40 CFR 122.26(b)(15).

On October 9, 1991, (56 FR 50978), EPA published criteria for solid waste disposal facilities, including municipal solid waste landfills (MSWLFs), pursuant to subtitle D of the Solid Waste Disposal Act. Several provisions of these regulations specifically address runon and runoff from the active portions of regulated units. Owners or operators of all MSWLF units are required under 40 CFR 258.25 to design, construct and maintain a runon control system to prevent flow onto the active portion of the MSWLF unit during the peak discharge from a 25-year storm. In addition, all MSWLF units are required to design, construct, and maintain a run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. Runoff from the active portion of the unit must be handled in accordance with the surface water requirements of 40 CFR 258.27(a), which provides that all MSWLF units must be operated in compliance with NPDES requirements.[19] Any discharges of a nonpoint source of polution from an MSWLF unit into waters of the United States must also be in conformance with any established water quality management plan developed under the CWA. The

[15] See appendices F, G, H, and I to 40 CFR part 122.

[16] The regulatory definitions of large and medium municipal separate storm sewer systems only specifically identify counties with a population of 100,000 in unincorporated, urbanized areas of the county.

[17] For example, if a district with a cummulative service population of 250,000 operates two sewage treatment plants, one of which serves 300,000, and the other which serves 50,000, both plants will be considered to be a facility that is owned or operated by a municipality with a population of 250,000 or more.

[18] Under this approach, EPA would base the population of facilities operated by a State DOT on the entire State population rather than the population of the local government entity with land use authority (e.g. city, town, township, county) in which the facility is physically located. EPA believes that this approach is appropriate because the State DOT facility will typically be operated fairly independently of the local government entity with land use authority and the major revenue sources of the State DOT are State-wide (such as gasoline taxes).

[19] The October 9, 1991 rule clarified that the subtitle D requirements call for the collection and control of runoff from the active portion of MSWLF units, but do not require that the collected runoff be sampled or treated. This was because when the notice was issued, EPA was in the process of implementing NPDES requirements for storm water discharges associated with industrial activity from landfills. In the October 9, 1991 notice EPA explained that the NPDES permit under the CWA would be the appropriate mechanism for ensuring that point source discharges of runoff from MSWLFs are protective of human health and the environment (see October 9, 1991, [56 FR 51054]).

effective date for these requirements are October 9, 1993.

Operators of landfills that are owned or operated by a municipality with a population of less than 100,000 with a storm water discharge associated with industrial activity [20] that are 'uncontrolled' must submit an NPDES permit application for their discharge, or obtain coverage under an appropriate general permit.

EPA remains concerned about the risks to surface water quality posed by landfills.[21] The Agency wants to clarify that storm water discharges from landfills that are owned or operated by a municipality with a population of less than 100,000 can still be required to obtain an NPDES permit even where they are in compliance with subtitle D requirements where they are designated under section 402(p)(2)(E) of the CWA as needing an NPDES permit because they are significant contributors of pollutants to waters of the United States or they contribute to a violation of a water quality standard.

III. Economic Impact

EPA has prepared an Information Collection Request (ICR) for the purpose of estimating the information collection burden imposed on Federal, State and local governments and industry by today's revisions to requirements to submit annual monitoring reports, minimum notice of intent (NOI) requirements for NPDES general permits, and for States to submit State Storm Water Permitting Plans.

EPA estimates that the total annual cost of complying with the revised monitoring reporting requirements for storm water discharges is $12,756,146. The Agency estimates that today's rule results in a annual reduction in costs to the regulated community of $8,973,526 over the prior regulatory requirement. EPA estimates that the annual costs of complying with NOI submissions required by NPDES permits to be $282,348. However, EPA believes that today's rule will not increase the existing burdens of complying with NOI requirements.

EPA estimates that the annual costs to State governments and EPA of reviewing monitoring reports for storm water discharges is $136,156. The Agency estimates that the annual costs to States and EPA of reviewing NOIs is $210,919. However, EPA believes that today's rule will not increase the existing burdens of reviewing NOIs. EPA estimates the total annual costs of preparing and reviewing State Storm Water Permitting Plans to $351,846.

IV. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major regulations are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. Today's regulatory amendments generally make the NPDES permit applications more flexible and less burdensome for the regulated community. These regulations do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute a major rule. This regulation was submitted to the Office of Management and Budget (OMB) for review.

V. Paperwork Reduction Act

The information requirements in this rule have been approved by the Office of Management and Budget (OMB) under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control number 2040–0004.

Public reporting burden for this collection of information is estimated to average 17.46 hours per response, an increase of 1.50 hours. This includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The 17.46 figure is an average for all dischargers under the NPDES program, including POTWs, industrial process, and stormwater dischargers. For storm water dischargers, the average burden per response will decrease by 3.8 hours per repondent.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's amendments to the regulations would generally make the NPDES regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

VII. APA Requirements

The amendments to permit application deadlines for storm water discharges associated with industrial activity from facilities owned or operated by municipalities are being adopted without notice and comment. As they merely codify the provisions of section 1068 of the Intermodal Surface Transportation Efficiency Act of 1991, they constitute interpretive rules for which notice and comment is not required. EPA requested comment on the issue of the minimum number of facilities that must submit sampling data in a group application in a December 7, 1988 notice (53 FR 49416). Additional notice and comment is not required for the clarification to the group application regulations made in today's rule because the Agency has already taken comments on this issue and today's action only clarifies the approach that was intended by the November 16, 1990 rule.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Environmental protection, Reporting and record keeping

---

[20] The existing landfill criteria in part 257 address all landfills except those covered by the revised criteria in part 258; which address municipal landfills which receive household hazardous wastes or hazardous wastes from small quantity generators. By contrast, the NPDES regulatory definition of "storm water discharge associated with industrial activity" addresses landfills that receive or have received any industrial wastes (wastes received from any of the other classes of facilities addressed by the regulatory definition of storm water discharges associated with industrial activity) (see 40 CFR 122.26(b)(14)).

[21] Surface water impacts associated with solid waste landfills are well characterized. In the August 30, 1988 (53 FR 33317) NPRM addressing solid waste disposal facility criteria under RCRA subtitle D, EPA noted that state inspection data, case study evidence, risk characterization studies, and the current limited use of design controls indicate that some solid waste landfills have degraded surface water quality and that this degradation could continue. Older landfils are of most concern because they may have received large volumes of hazardous waste and, in general, their use of design controls was very limited. States reported that of the 1,100 municipal solid waste landfills which monitored discharges to surface water, 660 were cited for surface water impacts. EPA believes that newer and future solid waste landfills may present lower risks because subtitle C regulations keep most hazardous waste out of solid waste landfills. In addition, design controls for solid waste landfills have improved, and are expected to continue to improve with the implementation of subtitle D requirements (see October 9, 1991 (56 FR 50981)).

requirements, Water pollution control, General permits, Storm water.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: March 23, 1992.

William K. Reilly,

Administrator.

For the reasons stated in the preamble, title 40 of the Code of Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Subpart B—Permit Application and Special NPDES Program Requirements

§ 122.26 [Amended]

2. Section 122.26 is amended by adding paragraph (b)(15), and revising paragraphs (c)(2)(i)(D), (e)(1), (e)(2)(i), (e)(2)(iii) and (e)(2)(iv) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(15) *Uncontrolled sanitary landfill* means a landill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(c) * * *

(2) * * *

(i) * * *

(D) For groups of more than 1,000 members, identify at least 100 dischargers participating in the group application from which quantitative data will be submitted. For groups of 100 or more members, identify a minimum of ten percent of the dischargers participating in the group application from which quantitative data will be submitted. For groups of between 21 and 99 members identify a minimum of ten dischargers participating in the group application from which quantitative data will be submitted. For groups of 4 to 20 members, identify a minimum of 50 percent of the dischargers participating in the group application from which quantitative data will be submitted. For groups with more than 10 members, either a minimum of two dischargers from each precipitation zone indicated in appendix E of this part in which ten or more members of the group are located, or one discharger from each precipitation zone indicated in appendix E of this part in which nine or fewer members of the group are located, must be identified to submit quantitative data. For groups of 4 to 10 members, at least one facility in each precipitation zone indicated in appendix E of this part in which members of the group are located must be identifed to submit quantitative data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in paragraphs (c)(1)(i)(B) and (c)(1)(i)(C) of this section, shall accompany this section. Different factors impacting the nature of the storm water discharges, such as the processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

* * * * *

(e) * * *

(1) *Individual applications.* (i) Except as provided in paragraph (e)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14) (i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or which is not authorized by a storm water general permit, a permit application made pursuant to paragraph (C) of this section shall be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(2) * * *

(i) *Part 1.* (A) Except as provided in paragraph (e)(2)(i)(B) of this section, part 1 of the application shall be submitted to the Director, Office of Wastewater Enforcement and Compliance by September 30, 1991;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 18, 1992.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

* * * * *

(iii) *Part 2.* (A) Except as provided in paragraph (e)(2)(iii)(B) of this section, part 2 of the application shall be submittted to the Director, Office of Wastewater Enforcement and Compliance by October 1, 1992;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 17, 1993.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(iv) *Rejected facilities.* (A) Except as provided in paragraph (e)(2)(iv)(B) of this section, facilities that are rejected as members of the group shall submit an individual application (or obtain coverage under an applicable general permit) no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

(B) Facilities that are owned or operated by a municipality and that are rejected as members of part 1 group application shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or October 1, 1992, whichever is later.

* * * * *

2a. Section 122.28 is amended by redesignating current paragraph (b)(2) as (b)(3) and by adding a new paragraph (b)(2) to read as follows:

§ 122.28 General permits (applicable to state NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Authorization to discharge, or authorization to engage in sludge use and disposal practices.* (i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this section, contains a provision that a notice of intent is not required or the Director

notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi) of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§ 122.6, 122.21 and 122.26.

(ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with § 122.22.

(iii) General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

(iv) General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Director. Coverage may be terminated or revoked in accordance with paragraph (b)(3) of this section.

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(vi) The Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph (b)(3)(iii) of this section.

* * * * *

§ 122.28 [Amended]

3. In redesignated paragraph 122.28(b)(3)(ii), the reference; "(b)(2)(i)" is revised to read "(b)(3)(i)".

4. In paragraph 122.28(c)(3), the reference; "122.28(b)(2)(i) (A) through (F)" is revised to read "122.28(b)(3)(i) (A) through (G)"

Subpart C—Permit Conditions

5. Section 122.44 is amended by revising paragraph (i)(2) and adding paragraphs (i)(3) through (i)(5) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(i) * * *

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with § 122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under § 122.41(l) (1), (4), (5), and (6) at least annually.

* * * * *

[FR Doc. 92-7279 Filed 4-1-92; 8:45 am]
BILLING CODE 6560-50-M